

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case No. 16-20394

VOLKSWAGEN AG,

Defendant./

PLEA HEARING
BEFORE HON. SEAN F. COX
United States District Judge
867 U.S. Courthouse
231 West Lafayette Boulevard
Detroit, Michigan 48226

(Friday, March 10, 2017)

APPEARANCES: JOHN K. NEAL, ESQUIRE
BENJAMIN SINGER, ESQUIRE
MARK CHUTKOW, ESQUIRE
JENNIFER L. BLACKWELL, ESQUIRE
Appearing on behalf of the Government.

CHRISTOPHER S. NIEWOEHNER, ESQUIRE
JASON M. WEINSTEIN, ESQUIRE
Appearing on behalf of Defendant
Volkswagen AG.

ALSO PRESENT: MANFRED DOESS, ESQUIRE
MICHAEL J. MELKERSEN, ESQUIRE
CRAIG HILBORN, ESQUIRE

COURT REPORTER: MARIE METCALF, CVR, CM
Federal Official Court Reporter
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U.S.A. v. Volkswagon AG

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WITNESSES:

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(None called)

EXHIBITS:

RECEIVED:

(None offered)

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1 Detroit, Michigan

2 Friday, March 10, 2017

3 At about 9:48 a.m.

4 * * *

5 DEPUTY COURT CLERK: United States District Court
6 for the Eastern District of Michigan is in session, the
7 Honorable Sean Cox presiding. Please be seated.

8 The Court calls case number 16-20394, the United
9 States of America versus Volkswagen AG.

10 Counsel, we need your appearances for the record,
11 please?

12 MR. NEAL: Good morning, Your Honor. John Neal
13 appearing on behalf of the United States.

14 THE COURT: Good morning.

15 MR. SINGER: Good morning, Your Honor. Ben Singer
16 appearing on behalf of the United States.

17 MS. BLACKWELL: May it please the Court, Jennifer
18 Blackwell on behalf of the United States.

19 MR. CHUTKOW: And Mark Chutkow for the government,
20 as well.

21 THE COURT: Good morning.

22 MR. WEINSTEIN: Good morning, Your Honor. Jason
23 Weinstein from Steptoe & Johnson, on behalf of Volkswagen,
24 joined by Christopher Niewoehner, also from Steptoe.

25 THE COURT: Good morning.

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1 MR. WEINSTEIN: With us at the table is Manfred
2 Doess, the general counsel of Volkswagen AG.

3 THE COURT: Good morning.

4 MR. DOESS: Good morning, Your Honor.

5 MR. MELKERSON: Good morning. Mike Melkersen on
6 behalf of the fraud victims.

7 THE COURT: Okay, thank you very much. All right.
8 Everyone ready?

9 MR. NEAL: Yes, Your Honor.

10 MR. WEINSTEIN: Yes, Your Honor.

11 THE COURT: Now, it is my understanding that the
12 defendant, Volkswagen AG, was arraigned earlier this morning
13 before Magistrate Judge Patti, is that correct?

14 MR. WEINSTEIN: It is, Your Honor.

15 MR. NEAL: It is, Your Honor.

16 THE COURT: All right. And it's my understanding
17 that Defendant Volkswagen AG now wishes to tender a guilty
18 plea in this matter, is that correct? And that is to the
19 charges of Count One, conspiracy to defraud the United
20 States, commit wire fraud and violate the Clean Air Act;
21 Count Two, obstruction of justice; and Count Three, entry of
22 goods by false full statement, is that correct?

23 MR. WEINSTEIN: That is correct, Your Honor.

24 MR. NEAL: That is my understanding as well, Your
25 Honor.

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1 THE COURT: And who will be speaking on behalf of
2 VW?

3 MR. WEINSTEIN: Mr. Doess, the general counsel, Your
4 Honor.

5 THE COURT: Good morning, sir.

6 MR. DOESS: Good morning, Your Honor.

7 THE COURT: All right. Please stand and raise your
8 right hand?

9 Sir, do you affirm the testimony you're about to
10 give will be the truth, the whole truth, and nothing but the
11 truth?

12 MR. DOESS: I swear.

13 THE COURT: Sir, could you give us your full name,
14 please?

15 MR. DOESS: Manfred Doess.

16 THE COURT: And it's my understanding, and please
17 correct me if I'm wrong, that you are fluent in English and
18 do not need the assistance of an interpreter, is that
19 correct?

20 MR. DOESS: That's correct, Your Honor.

21 THE COURT: Okay. Now at this time I'm going to
22 give the attorneys the opportunity to make any opening
23 remarks or statements they may wish before I proceed further.

24 Mr. Neal, is there anything you wish to state before
25 I proceed with the plea?

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1 MR. NEAL: Your Honor, not at this time. I'm glad
2 to summarize the plea agreement when that time is
3 appropriate, but for right now I don't have an opening, any
4 opening remarks on that.

5 THE COURT: Okay, very good. Mr. Weinstein?

6 MR. WEINSTEIN: Same for us, Your Honor. We'd be
7 happy to address the reasons why we believe the plea
8 agreement should be accepted at the appropriate time.

9 THE COURT: Okay, very good. We will wait until
10 later then.

11 Now, Mr. Doess, I have some questions for you. And
12 I need to determine whether or not you are both authorized
13 and competent to enter a plea on behalf of Volkswagen AG here
14 this morning.

15 And during the course of this proceeding, I may
16 refer to the "corporation," and when I use the term
17 "corporation," of course, I am referring at all times to
18 defendant Volkswagen AG.

19 Do you understand?

20 MR. DOESS: I understand this, Your Honor.

21 THE COURT: And if any time during the course of
22 this proceeding, you are confused or you want to take a break
23 or want to talk to youR counsel, just stop and let me know.
24 We're no rush. All right?

25 MR. DOESS: I appreciate it, Your Honor.

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1 THE COURT: Okay. Now, sir, have you received and
2 carefully reviewed a copy of the third superseding
3 information in this matter?

4 MR. DOESS: I have, Your Honor.

5 THE COURT: And have you had the opportunity to
6 review that document with your attorneys?

7 MR. DOESS: I had the opportunity, Your Honor.

8 THE COURT: And which attorneys did you review the
9 document with?

10 MR. DOESS: With Mr. Weinstein here on my left, and
11 Niewoehner on my right.

12 THE COURT: Okay. And it's my understanding that
13 you have thoroughly discussed that document with your
14 attorneys, is that correct?

15 MR. DOESS: That is absolutely correct, Your Honor.

16 THE COURT: Okay. And is it your desire to plead
17 guilty on behalf of the defendant, Volkswagen AG, today to
18 the charges of Count One, conspiracy to defraud the United
19 States, commit wire fraud, and violate the Clean Air Act;
20 Count Two, obstruction of justice; and Count three, entry of
21 goods by false statement?

22 MR. DOESS: That is my desire, Your Honor.

23 THE COURT: Okay. Sir, I have some questions for
24 you as the corporate representative appearing on behalf of
25 Volkswagen.

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1 Do you understand you must tell the truth? Any
2 false answers can be used against you for a separate
3 prosecution for perjury or false statement.

4 Do you understand that?

5 MR. DOESS: I understand this, Your Honor.

6 THE COURT: Okay. Mr. Doess, where are you
7 employed?

8 MR. DOESS: I'm employed with Volkswagen as a
9 general counsel of the company since January 1, 2016.

10 THE COURT: And again, your title is general
11 counsel?

12 MR. DOESS: That's correct, Your Honor.

13 THE COURT: Do you have any further titles or
14 responsibilities with VW?

15 MR. DOESS: No, Your Honor.

16 THE COURT: Okay. Now, have you been duly
17 authorized by the Board of Directors for Volkswagen AG to
18 speak on behalf of Volkswagen AG here today?

19 MR. DOESS: That's correct, Your Honor.

20 THE COURT: And is that in connection with this
21 criminal action which has been filed against Volkswagen AG
22 and others by the United States?

23 MR. DOESS: That's correct, as well.

24 THE COURT: Okay. Sir, do you read, write and
25 understand English?

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1 MR. DOESS: I do, Your Honor.

2 THE COURT: Sir, how old are you?

3 MR. DOESS: I am 59, Your Honor.

4 THE COURT: That's a good age.

5 And what is your educational background?

6 MR. DOESS: My educational background is I have a
7 law degree from a university in Germany.

8 THE COURT: Sir, are you now under the influence of
9 any medication, drugs or alcoholic beverages?

10 MR. DOESS: No, Your Honor.

11 THE COURT: And again, is it your intention today to
12 enter a guilty plea as to Counts One, Two, and Three on
13 behalf of the corporation, pursuant to a Rule 11 agreement
14 that was executed between the defendant and the government?

15 MR. DOESS: That's my desire, Your Honor.

16 THE COURT: Okay. And have you been authorized by
17 Volkswagen AG's board of directors to enter into such a
18 guilty plea here today?

19 MR. DOESS: That's correct, Your Honor.

20 THE COURT: Now, is the authorization memorialized
21 in a writing which would be Exhibit One, which is, as I
22 understand, attached to the Rule 11 agreement, is that
23 correct?

24 MR. DOESS: That's absolutely correct, Your Honor.

25 THE COURT: All right. And it's my understanding

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1 that the Rule 11 agreement has been marked as Exhibit One for
2 today's proceeding, is that correct?

3 MR. WEINSTEIN: That is correct, Your Honor.

4 MR. NEAL: That is correct, Judge.

5 THE COURT: Mr. Doess, have you discussed the
6 decision whether or not to enter a guilty plea with the
7 corporation's outside counsel?

8 MR. DOESS: I have, Your Honor.

9 THE COURT: And who are those individuals?

10 MR. DOESS: Those individuals are Mr. Weinstein, and
11 Mr. Niewoehner, and Mr. Weingarten of the law firm of Steptoe
12 & Johnson.

13 THE COURT: Are you satisfied with the advice and
14 legal representation that has been provided to you by
15 Mr. Weinstein, Mr. Niewoehner, as well as Mr. Weingarten in
16 this case?

17 MR. DOESS: I'm satisfied with the advice. Thank
18 you.

19 THE COURT: During the arraignment this morning,
20 Judge Patti, the magistrate judge, reviewed with you the
21 statutory maximum penalties authorized by statute for the
22 three offenses listed in the third superseding information,
23 is that correct?

24 MR. DOESS: That is correct, Your Honor.

25 THE COURT: Okay. The first charge is Count One,

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1 conspiracy to defraud the United States, to commit wire fraud
2 and to violate the Clean Air Act. That charge carries with
3 it a fine of up to \$500,000 or greater -- or the greater of
4 twice the gross gain, or twice the gross loss, as well as
5 probation of up to five years.

6 Count Two, the charge is obstruction of justice.
7 That charge carries with it a fine of up to \$500,000, or the
8 greater of twice the gross gain, or twice the gross loss, as
9 well as probation up to five years.

10 The final charge, Count Three, is entry of goods by
11 false statement, which carries a fine of up to \$500,000, or
12 the greater of twice the gross gain, or twice the gross loss,
13 as well as probation of up to five years.

14 Mr. Neal, did I state the charges, as well as the
15 sentencing consequences of the charges correctly?

16 MR. NEAL: You did, Your Honor.

17 THE COURT: Mr. Weinstein?

18 MR. WEINSTEIN: You did, Your Honor.

19 THE COURT: And sir, have you heard the charges that
20 have been made against Volkswagen?

21 MR. DOESS: I've heard these charges, Your Honor.

22 THE COURT: And have you discussed the charges, as
23 well as the consequences of these charges, with your
24 attorneys?

25 MR. DOESS: I did, Your Honor.

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1 THE COURT: And have your attorneys answered each
2 and every question that you have had regarding the charges,
3 as well as the sentencing consequences of these charges?

4 MR. DOESS: I did, Your Honor.

5 THE COURT: And do you have any questions at all
6 regarding the charges or the sentencing consequences of these
7 charges?

8 MR. DOESS: No, Your Honor.

9 THE COURT: Mr. Weinstein, will you confirm for the
10 record that you, in fact, have discussed the charges as well
11 as the sentencing consequences of the charges with your
12 client Mr. Doess?

13 MR. WEINSTEIN: I will, Your Honor.

14 THE COURT: Okay. This Court finds Mr. Doess is
15 competent and duly authorized to enter into a knowing plea on
16 behalf of the defendant, Volkswagen AG, here today.

17 Mr. Neal, do you agree with the Court's finding?

18 MR. NEAL: I do, Your Honor.

19 THE COURT: Mr. Weinstein?

20 MR. WEINSTEIN: I do, Your Honor.

21 THE COURT: Now, Mr. Doess, do you understand that
22 by entering a guilty plea to the three charges that have been
23 made against VW AG, that VW AG is giving up certain valuable
24 rights?

25 MR. DOESS: I do understand this, Your Honor.

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1 THE COURT: Do you understand that VW AG has an
2 absolute right to plead not guilty to the charges and to go
3 to trial, and that by pleading guilty, VW AG is giving up
4 that right?

5 Do you understand that?

6 MR. DOESS: I understand this, Your Honor.

7 THE COURT: Okay. Do you understand at trial VW AG
8 would be presumed to be innocent and the government of the
9 United States would have to prove VW AG's guilt beyond a
10 reasonable doubt as to each element of each charge made
11 against VW?

12 Do you understand?

13 MR. DOESS: I understand and appreciate these
14 rights, Your Honor.

15 THE COURT: Now, I'm going to go through each of the
16 three charges and describe the elements of each of the
17 charges that the government would have to prove at trial
18 beyond a reasonable doubt.

19 Count One of the third superseding information
20 charges the corporation with conspiracy in violation of 18
21 United States Code Section 371.

22 The elements for conspiracy to defraud the United
23 States by obstructing the lawful function of the federal
24 government are as follows: That two or more persons
25 conspired or agreed to defraud the United States or one of

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1 its agencies or departments, in this case the Environmental
2 Protection Agency, which of course is known as the EPA, by
3 dishonest means; that the defendant which would of course be
4 VW AG, knowingly and voluntarily joined the conspiracy, and
5 that a member of the conspiracy, did one of the overt acts
6 described in the indictment for the purposes -- or
7 information for the purposes of advancing or helping the
8 conspiracy.

9 The elements for conspiracy to violate the wire
10 fraud statute and the Clear Air Act are as follows: That two
11 or more persons conspired or agreed to commit a crime, in
12 this case, a violation of the wire fraud statute, which is 18
13 U.S.C. Section 1343, and the Clean Water Act (sic), which is
14 42 United States Code Section 7413(c)(2)(A), as described
15 below. That I guess I'm going to describe right now.

16 That the defendant knowingly and voluntarily joined
17 the conspiracy, and that a member of the conspiracy did one
18 of the acts -- excuse me, overt acts described in the
19 indictment or information for the purpose of advancing or
20 helping the conspiracy.

21 As to the object of the conspiracy, wire fraud,
22 under 18 United States Code Section 1343, the government must
23 show that the defendant, VW AG, knowingly participated in,
24 devised or intended to devise a scheme to defraud in order to
25 obtain money or property.

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1 The scheme included a material misrepresentation or
2 concealment of a material fact.

3 The defendant had the intent to defraud and the
4 defendant used, or caused another to use, wire, radio, or
5 television communication in interstate or foreign commerce in
6 furtherance of the scheme.

7 As to the object of the conspiracy, the Clean Air
8 Act, 42 United States Code Section 7413(c)(2)(A), the
9 government must show that the defendant, VW AG, knowingly
10 made or caused to be made a false material statement,
11 representation, or certification, or omission of material
12 information. The statement, representation, or certification
13 that was made, or omitted, or caused to be made, or omitted,
14 was in a notice, application, record, report, plan or other
15 document required to be filed or maintained under the Clean
16 Air Act.

17 And the statement, representation, certification or
18 omission of information was material.

19 Mr. Neal, did I accurately state the essential
20 elements of Count One?

21 MR. NEAL: You did, Your Honor.

22 THE COURT: Mr. Weinstein?

23 MR. WEINSTEIN: Yes, you did, Your Honor.

24 THE COURT: Turning to Count Two. Count Two of the
25 third superseding information charges VW AG with obstruction

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1 of justice, in violation of Title 18, United States Code
2 Section 1512(c).

3 The elements for obstruction of justice are as
4 follows: That the defendant, of course this is VW AG,
5 altered, destroyed, mutilated or concealed a record,
6 document, or other object; that the defendant acted
7 knowingly; that the defendant acted corruptly; and that the
8 defendant acted with the intent to impair the record,
9 document or objects' integrity or availability for use in an
10 official proceeding.

11 Mr. Neal, did I state the -- excuse me.

12 Mr. Neal, did I accurately state the essential
13 elements of Count Two?

14 MR. NEAL: You did, Your Honor.

15 THE COURT: Mr. Weinstein?

16 MR. WEINSTEIN: You did, Your Honor.

17 THE COURT: Count Three of the third superseding
18 information charges VW AG with introducing imported
19 merchandise into the United States by means of false
20 statements in violation of 18 United States Code Section 542.

21 The elements of entry of false goods by false
22 statement are as follows: That the merchandise was imported,
23 that the defendant, VW AG, entered or introduced merchandise
24 into the commerce of the United States; that the defendant
25 did so by means of a false statement, which it knew was false

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1 and that the false statement was material to the entry of the
2 merchandise.

3 Mr. Neal, did I accurately state the essential
4 elements of Count Three?

5 MR. NEAL: You did, Your Honor.

6 THE COURT: Mr. Weinstein?

7 MR. WEINSTEIN: You did, Your Honor.

8 THE COURT: Mr. Doess, do you understand that if VW
9 AG went to trial as to Counts One, Two, and/or Three, the
10 government would have to prove each and every one of the
11 essential elements of the count to a jury beyond a reasonable
12 doubt?

13 MR. DOESS: I understand this, Your Honor.

14 THE COURT: And at trial, VW would be presumed to be
15 innocent and the United States government would have to prove
16 the defendant's guilt.

17 Do you understand that?

18 MR. DOESS: I also understand this, Your Honor.

19 THE COURT: And at trial, the corporation, VW, would
20 be entitled to counsel and that counsel would have the right
21 to cross-examine any witnesses called by the government.

22 Do you understand?

23 MR. DOESS: I understand these rights, Your Honor.

24 THE COURT: Do you understand that the corporation
25 could call witnesses on its own behalf and it could have its

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1 attorney subpoena witnesses on its behalf, if they would not
2 voluntarily appear at trial?

3 Do you understand?

4 MR. DOESS: I do understand this, Your Honor.

5 THE COURT: And do you understand the corporation,
6 however, would also have the right to remain silent during
7 the trial, that is, VW AG would have no obligation to produce
8 any evidence on its own behalf?

9 It could choose to produce no evidence and offer no
10 testimony, and the factfinder could not use that silence
11 against the corporation, that is, because the burden of proof
12 in a criminal case rests solely with the government.

13 Do you understand that?

14 MR. DOESS: I understand all these fundamental
15 rights.

16 THE COURT: And do you understand that VW AG would
17 have the right to have a trial before the jury or the Court?

18 MR. DOESS: I understand this, Your Honor.

19 THE COURT: And if the corporation, VW AG, chose to
20 have a jury trial, such a trial would take place before a
21 jury of at least 12 jurors, would probably be alternates as
22 well, and any verdict reached in jury trial, whether it would
23 be guilty or not guilty, could only be reached if the 12
24 jurors reached a unanimous decision.

25 Do you to understand that?

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1 MR. DOESS: I understand that, Your Honor.

2 THE COURT: And again, understanding all these
3 rights, is it still your choice on behalf of the VW AG to
4 waive those rights and enter into a guilty plea on behalf of
5 VW AG as to Counts One, Two, and Three?

6 MR. DOESS: It's my choice, and my desire, Your
7 Honor.

8 THE COURT: Mr. Doess, do you have the Rule 11
9 agreement in front of you, which I understand has been marked
10 as Exhibit One?

11 MR. DOESS: I do, Your Honor.

12 THE COURT: My first question to you, sir, is have
13 you signed the document?

14 MR. DOESS: I have signed this document, Your Honor.

15 THE COURT: At what page?

16 MR. DOESS: I signed on page 36, Your Honor.

17 THE COURT: Before you signed that document, did you
18 read the document, as well as the three attachments?

19 MR. DOESS: I did, Your Honor.

20 THE COURT: Okay. Before you signed that document,
21 did you review the document, as well as the three
22 attachments, the three exhibits, with your attorneys?

23 MR. DOESS: I did, Your Honor.

24 THE COURT: Before you signed that document, did
25 your attorneys answer each and every question that you had

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1 regarding anything contained in the Rule 11 agreement, as
2 well as the three attached exhibits?

3 MR. DOESS: They did, as expected.

4 THE COURT: Do you have any questions at all
5 regarding anything contained in the Rule 11 agreement, as
6 well as the attached exhibits?

7 MR. DOESS: No, Your Honor.

8 THE COURT: Okay. And again, are you satisfied with
9 the advice and service that your attorneys have provided to
10 you in this case?

11 MR. DOESS: I am, Your Honor.

12 THE COURT: Sir, in a moment, as you probably know,
13 I'm going to give the government an opportunity to summarize
14 the material portions of the Rule 11 agreement.

15 But first, I would like to note some important
16 aspects of the Rule 11 agreement which has been submitted to
17 me, all right?

18 MR. DOESS: All right.

19 THE COURT: Do you understand that if the Court
20 accepts this Rule 11 agreement, then Volkswagen AG can expect
21 that its sentence will be in accordance with the penalty
22 provisions as set forth in the Rule 11 agreement?

23 Do you understand that?

24 MR. DOESS: I understand that, Your Honor.

25 THE COURT: If I accept the Rule 11 agreement, VW

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1 AG's conviction would be -- convictions as to the three
2 charges would be final and that Volkswagen AG would have no
3 right to appeal its criminal conviction.

4 In addition, as long as the sentence imposed by this
5 Court is as provided under the Rule 11 agreement, VW AG would
6 also be waiving its right to appeal the sentence.

7 Do you understand?

8 MR. DOESS: I understand this.

9 THE COURT: Any questions at all?

10 MR. DOESS: No, Your Honor.

11 THE COURT: And if the Court were to conclude that
12 the sentencing provisions set forth in the Rule 11 agreement
13 are not fair, are not just, however then the Court, me, would
14 advise VW AG of that prior to sentencing and Volkswagen AG
15 would have the option of withdrawing its guilty plea and
16 proceeding to trial instead.

17 Do you understand?

18 MR. DOESS: I understand this, Your Honor.

19 THE COURT: Any questions at all?

20 MR. DOESS: No, Your Honor.

21 THE COURT: All right. Mr. Neal, you're up to bat.
22 it's my understanding that the government wishes to summarize
23 the material terms of the Rule 11 agreement. Is that true?

24 MR. NEAL: That's correct, Your Honor.

25 THE COURT: All right, you may proceed.

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1 MR. NEAL: Thank you, Judge.

2 Volkswagen AG, as part of the Rule 11 agreement,
3 will be entering a plea to all three charged counts, those
4 are the counts the Court has covered, specifically conspiracy
5 to defraud the United States, to commit wire fraud, and to
6 violate the Clean Air Act, obstruction of justice, and entry
7 of goods by means of a false statement.

8 The Court has covered the statutory maximum
9 penalties for each count. Those are also summarized in the
10 Rule 11 plea agreement.

11 With respect to the guideline range, there are no
12 disputes on the guidelines requiring resolution by the Court.
13 The guidelines were calculated primarily through reference to
14 Section H of the United States Sentencing Guidelines.

15 The culpability score that is included in the Rule
16 11 agreement is an 11, pursuant to Section 8C2.5 of the
17 guidelines. The base fine that's included in the agreement
18 is \$8.5 billion, and that is the pecuniary loss caused by the
19 offense.

20 When the culpability score is attached to the
21 8.5 billion base fine, the multiplier that the guidelines
22 contemplates is a multiplier between two and four times the
23 base fine. So that yields a guideline range between
24 approximately \$17 billion and \$34 billion for a criminal fine
25 in the agreement.

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1 In calculating the ultimate fine that was included
2 in the agreement, the government evaluated a number of
3 individualized facts and circumstances that were relevant to
4 this case, and to this defendant, Volkswagen AG. And the
5 considerations that the government evaluated in coming up
6 with the ultimate fine numbers included in the agreement are
7 actually listed in the agreement. And I would like to
8 summarize those briefly for the record.

9 The relevant considerations fall, I think, broadly
10 into two categories. One category is a category that
11 suggests that the fine should be elevated. There's another
12 category that suggests the fine should be reduced.

13 And the government evaluated all of these factors
14 together in coming up with its -- the ultimate fine level
15 that we put in the agreement.

16 Starting with the factors that would tend to
17 militate in favor of an increased fine, we should start with
18 the fact that the nature and circumstances of the offense are
19 very serious.

20 Obviously, this was a premeditated crime, which is a
21 crime that went to a very high level within the corporate
22 structure. This was a crime that was not the product of a
23 momentary lapse of judgment, or even a series of isolated bad
24 decisions.

25 This was a very well-thought-out, calculated,

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1 well-planned offense, that again went to a very high level
2 within the organization. So that certainly is a factor that
3 cuts against the corporation's analysis.

4 Secondly, the corporation did not voluntarily
5 disclose its misconduct to the government, which is another
6 factor that cuts against the corporation in terms of the fine
7 amounts.

8 And finally, the defendant engaged in obstructive
9 conduct that's described in some detail in the statement of
10 facts, which is Exhibit Two to the Rule 11 plea agreement,
11 that included destroying a number of documents and data after
12 learning about the existence of the government's
13 investigation. And again, there were a number of individuals
14 employed by the company that engaged in this conduct.

15 I should note, however, unlike the underlying
16 conduct about the emissions activity, the corporation did
17 voluntarily disclose the obstructive conduct to the
18 government, and did provide the government with a number of
19 underlying facts about that conduct.

20 Anyway, I think those are the factors that cut
21 against the corporation in its analysis.

22 There are number of other factors the government
23 considered that I think work in the corporation's favor, and
24 let me summarize those for the record.

25 The defendant has already agreed to compensate

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1 victims of the underlying criminal conduct in a separate
2 proceeding out in San Francisco, and it's provided those
3 individual consumer victims with more than they would have
4 been entitled to under a criminal restitution analysis, and
5 the amount of that compensation based on a net present value
6 analysis is approximately \$11 billion. That was a very
7 substantial effort the corporation has made to make victims
8 whole.

9 The defendant has engaged in remedial measures, and
10 that includes termination and suspension of certain
11 individuals that engaged in the misconducts. They have also
12 taken steps to improve compliance within the corporate
13 structure, added a position to the board that has primary
14 responsibility for compliance in legal matters.

15 I should note that those remedial measures are
16 incomplete, and are very much an ongoing process. However,
17 in the Rule 11 plea agreement, the corporation has agreed to
18 continue to enhance its compliance program and its internal
19 controls.

20 I think, moreover -- and this is very significant,
21 moreover, the defendant has agreed to the appointment of an
22 independent compliance monitor for a period of three years.
23 And that monitor, and his or her team, will monitor and
24 assess Volkswagen AG and its wholly-owned subsidiary,
25 Volkswagen Group of America's compliance with this agreement,

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1 and compliance with federal law. And that is a significant
2 step.

3 The defendant has also agreed, another
4 consideration, the defendant has also agreed to cooperate
5 with the government and its ongoing investigation into the
6 conduct of individuals in the company, and that includes
7 officers, directors, employees, agents, and partners.

8 And the terms of that cooperation are spelled out in
9 the agreement. It requires, among other things, that the
10 corporation make witnesses -- use its best efforts to make
11 witnesses available to the United States government for
12 interviews, the corporation produce documents upon request,
13 and the corporation provide facts to the United States
14 government on request should those facts be relevant to an
15 ongoing investigation.

16 Another consideration, Volkswagen does not have a
17 criminal history, which is another factor that I think cuts
18 in their favor in this analysis.

19 And finally, the defendant has independently agreed
20 to pay \$1.5 billion in civil penalties as a result of the
21 conduct that's the subject of the Rule 11 plea agreement.

22 So after a consideration of all these factors, both
23 those that cut in favor of the company and those that cut
24 against the company, the defendants received a credit of
25 approximately 20 percent off of the low end of the guideline

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1 range of 17 billion to 34 billion, as a result of their
2 cooperation.

3 And in addition to that 20 percent cooperation
4 credit, once that was credited, the government also applied a
5 credit of the net present value of the civil settlement
6 they've entered into with respect to individual consumers and
7 individual owners of these vehicles, and that was
8 approximately \$11 billion.

9 So when those two reductions are subtracted from the
10 guideline range, that yields a figure of \$2.8 billion as a
11 criminal penalty, and \$2.8 billion as a criminal penalty that
12 Volkswagen AG is agreeing to pay in this Rule 11 plea
13 agreement.

14 Moving on from the fine, just briefly there's some
15 other provisions of --

16 THE COURT: No rush. Go ahead.

17 MR. NEAL: Very well. So there's a probationary
18 term of three years, which intersects with the monitor's
19 term.

20 There is a special assessment of \$1200, \$400 per
21 count. Both the fine and the special assessments are payable
22 within ten days of judgment in this case.

23 Moving on through the Rule 11, there is a provision
24 regarding other charges. The government agrees, as part of
25 the agreement, not to bring additional charges against

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1 Volkswagen AG or any of its wholly-owned subsidiaries for the
2 conduct as described in the statement of facts, other
3 emissions-related conduct with respect to the same vehicles
4 that are the subject of this agreement, and for any other
5 conduct that has been disclosed to the government as of the
6 date of the agreement.

7 There are in the Rule 11, a number of enumerated
8 exceptions to that, that obviously does not apply to
9 individual prosecutions, for example. But those are all
10 summarized in the -- or all listed, I should say, in the Rule
11 11.

12 I mentioned earlier, as one of the relevant
13 considerations, the defendant has ongoing cooperation or
14 ongoing responsibility to cooperate with the government's
15 investigation until such investigations are concluded, and
16 that includes again, disclosing factual information about its
17 activities upon inquiry by the government, providing
18 documents, data, tangible objects to the government, and
19 using its best efforts to make employees available for
20 interviews by the government as we move forward in this
21 process.

22 I've mentioned the independent compliance monitor.
23 There is an attachment to the Rule 11 agreement, which spells
24 out the responsibilities of the independent compliance
25 monitor. That is very significant part of the agreement that

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1 I want the record to reflect.

2 There is, as the Court covered before I began, there
3 is appellant's waiver here, as well as a Rule 410 waiver, the
4 corporation, assuming this plea is accepted, and the Rule 11
5 is accepted, they will waive their rights to appeal their
6 conviction on any grounds.

7 They will also waive their right to appeal their
8 sentence, assuming the sentence that's imposed is in
9 accordance with the terms of the agreement. If they were to
10 enter a guilty plea, and that plea were later to be
11 withdrawn, any statement made by the company in this
12 proceeding or in the statement of facts attached to the Rule
13 11 agreement would be admissible for any purpose in a further
14 criminal proceeding.

15 The final portion of the agreement that I wanted to
16 cover was the provisions on breach. If the company were to
17 violate U.S. law during the term of probation, if the
18 corporation were to fail to cooperate with the United States
19 investigation or fail to otherwise perform its obligations
20 under the Rule 11 agreement, the United States could
21 reinstate charges, the charges in the third superseding
22 information, and the United States could also bring any other
23 charges based on the underlying conduct described in the
24 statement of facts.

25 I believe those are all of the material provisions

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1 of the Rule 11 agreement that I wanted to cover for the
2 record.

3 I'd be glad to address anything further if the Court
4 has questions.

5 THE COURT: Nothing right now, Mr. Neal -- or
6 nothing so far.

7 MR. NEAL: Thank you, Judge.

8 THE COURT: Mr. Weinstein, is there anything you
9 wish to put on the record regarding the Rule 11 provisions,
10 and do you agree with Mr. Neal's summary of the contents of
11 the Rule 11 agreement?

12 MR. WEINSTEIN: Your Honor, nothing at this time. I
13 believe Mr. Neal accurately and thoroughly summarized the
14 relevant provisions of the agreement.

15 THE COURT: All right. Thank you very much.

16 Okay. Mr. Doess, has anyone tried, anyone, any
17 government, any organization, tried to coerce VW AG into
18 guilty pleas or a guilty plea as to the three charges made in
19 this case, coercion by way of mistreatment or pressure, any
20 type of coercion at all?

21 MR. DOESS: No, Your Honor.

22 THE COURT: Okay. Apart from what is contained in
23 the Rule 11 agreement, have there been any promises made to
24 you or VW AG in exchange for VW AG pleading guilty to Counts
25 One, Two, and Three here today?

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1 MR. DOESS: No, Your Honor.

2 THE COURT: Is VW AG pleading guilty to the charges,
3 Count One, conspiracy to defraud the United States, commit
4 wire fraud, and violate the Clean Air Act; Count Two,
5 obstruction of justice; Count Three, entry of goods by a
6 false statement, because VW AG is, in fact, guilty of those
7 charges, and because VW AG, through its Board of Directors,
8 has freely and voluntarily chosen to plead guilty to these
9 three charges?

10 MR. DOESS: That is the case, Your Honor.

11 THE COURT: Okay. Mr. Neal, and Mr. Weinstein,
12 could we have a quick sidebar? I do have a question before
13 we proceed further.

14 (Sidebar conference on the record)

15 THE COURT: So right now we're getting to do the
16 factual basis for the three counts. And it's my
17 understanding he has a -- I'm going to ask him what it is you
18 did that makes you believe, what did VW AG do which makes you
19 believe that VW AG is guilty of -- I was going to break them
20 down individually, but does the statement that he's going to
21 read, a statement of facts, does it break it down by count or
22 does it cover all three?

23 MR. WEINSTEIN: So it breaks it down count-by-count,
24 and then he's got a statement at the end where he just says
25 overall, that the statement of facts is true and accurate,

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1 okay?

2 THE COURT: Okay. So we're going to go
3 count-by-count?

4 MR. WEINSTEIN: Yeah. He's got a brief introduction
5 and then count-by-count.

6 THE COURT: Okay, thank you.

7 MR. WEINSTEIN: Thank you, Your Honor.

8 (Sidebar conference concluded)

9 THE COURT: Mr. Doess, what did VW AG and its
10 employees and agents do that makes VW AG guilty of the charge
11 of Count One, conspiracy to defraud the United States, to
12 commit wire fraud, and violate the Clean Air Act?

13 MR. DOESS: Your Honor, Volkswagen AG is pleading
14 guilty to all three counts of the information, because it is
15 guilty of all three counts.

16 The government and Volkswagen AG worked diligently
17 to negotiate the statement of facts that appears as Exhibit
18 Two to the plea agreement. And Volkswagen AG has admitted
19 those facts.

20 A brief summary with respect to Count One, as of
21 course in the statement of facts, from approximately 2006
22 until approximately 2015, Volkswagen AG, through various VW
23 AG and Audi AG employees and supervisors below the level of
24 the VW AG management board, conspired to defraud the United
25 States by using software to evade the U.S. NOx emissions

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1 testing process to make it appear that certain VW, Audi and
2 Porsche diesel vehicles that were sold in the United States
3 met U.S. standards, when in fact they did not.

4 Various VW AG and Audi AG employees also agreed to
5 submit false statements under the Clean Air Act so that VW
6 could sell the subject diesel vehicles in the United States
7 and deceive U.S. customers about whether those vehicles
8 complied with U.S. NOx emission standards.

9 THE COURT: Mr. Doess, what did VW AG and its
10 employees and agents do that makes you believe, makes the
11 corporation believe, the board believe, that VW AG is guilty
12 of Count Two to the charge of obstruction of justice?

13 MR. DOESS: Your Honor, with respect to Count Two,
14 as set forth in the statement of facts, some Volkswagen AG
15 employees and supervisors destroyed documents and files
16 related to U.S. NOx emissions issues after they were informed
17 that a litigation hold was likely to be issued.

18 THE COURT: Mr. Doess, what did VW AG and its
19 employees and agents do that makes you believe that VW AG is
20 guilty of Count Three, entry of goods by false statement?

21 MR. DOESS: Your Honor, with respect to Count Three,
22 as set forth in the statement of facts, during the process of
23 importing the subject diesel vehicles into the United States,
24 various Volkswagen AG employees misrepresented to U.S.
25 regulators that the subject vehicles complied with U.S. NOx

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1 emission standards when they knew this was not true, and
2 caused manufacturer's labels to be affixed to the subject
3 vehicles, falsely stating that they complied with applicable
4 U.S. NOx emissions regulations, knowing that this was untrue.

5 THE COURT: Mr. Doess, with respect to the acts that
6 you described regarding Count One, when did these acts occur?

7 MR. DOESS: These acts occurred in a timeframe
8 between approximately 2006 and approximately 2015.

9 THE COURT: And where did these acts occur?

10 MR. DOESS: They occurred in Germany and in the
11 United States.

12 THE COURT: And where in the United States?

13 MR. DOESS: In several locations here in the United
14 States, in as I understand it, for example, in Ann Arbor or
15 in California.

16 THE COURT: With respect to the acts you described
17 regarding the factual basis as to Count Two of the
18 indictment, when did these acts occur?

19 MR. DOESS: These acts occurred after a litigation
20 hold was issued, or just before it was issued, knowing that
21 it would be issued.

22 THE COURT: Approximately when was that?

23 MR. DOESS: That was in September 2015, and in the
24 following month.

25 THE COURT: And where did these acts occur that you

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1 describe regarding Count Two?

2 MR. DOESS: These acts occurred in Germany and in
3 the U.S. as well.

4 THE COURT: And where in the U.S.?

5 MR. DOESS: In Ann Arbor and in Herndon, in
6 Virginia.

7 THE COURT: Okay. Thank you, very much.

8 With respect to Count Three, the acts that you
9 described in Count Three, when did these acts occur?

10 MR. DOESS: These acts occurred in a timeframe when
11 cars which contained the software were imported into the
12 United States, starting, if I'm correct, roughly at around
13 2007.

14 THE COURT: And again this is regarding Count Three.
15 Where did these acts occur?

16 MR. DOESS: In several entry ports here in the
17 United States.

18 THE COURT: And including Michigan, as well?

19 MR. DOESS: And including Michigan, as well.

20 THE COURT: And would that include the Detroit area,
21 the Eastern District of Michigan?

22 MR. DOESS: This is -- I was told this is the case,
23 Your Honor.

24 THE COURT: Thank you, very much.

25 And, sir, it's my understanding that you've also

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1 read and understand the rather extensive factual basis that
2 is set forth in Exhibit Two of the Rule 11.

3 Is that correct?

4 MR. DOESS: That is correct, Your Honor.

5 THE COURT: Sir, is everything set forth in Exhibit
6 Two to the Rule 11 true and accurate?

7 MR. DOESS: That is correct, Your Honor.

8 THE COURT: And again, sir, with respect to Counts
9 One, Two, and Three of the third superseding information, how
10 does VW AG plead?

11 MR. DOESS: Guilty, Your Honor.

12 THE COURT: Mr. Neal, is the government satisfied
13 that Mr. Doess has laid out a sufficient factual basis
14 regarding the elements of the crime of Count One, conspiracy
15 to defraud the United States, to commit wire fraud and
16 violate the Clean Air Act; Count Two, obstruction of justice;
17 and Count Three, entry of goods by false statement?

18 MR. NEAL: We are satisfied, Your Honor.

19 I would make one note for the record with respect to
20 Count Two.

21 THE COURT: Yes, sir.

22 MR. NEAL: With respect to Count Two, the conduct
23 described in the statement of facts took place exclusively in
24 Germany.

25 However, the investigation that spurred the conduct

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1 was based here in Michigan. It was an EPA investigation, and
2 due to the extraterritorial nature of that statute, that its
3 venue is here in the Eastern District of Michigan.

4 THE COURT: Mr. Weinstein, would you agree?

5 MR. WEINSTEIN: I do agree, Your Honor.

6 THE COURT: Okay. Mr. Weinstein, has Mr. Doess's
7 statements as to the facts and actions of Defendant VW AG
8 through its employees and agents, has his statements here
9 satisfied, created a sufficient factual basis for conviction
10 as to Counts One, conspiracy to defraud the United States;
11 Count Two, wire fraud -- sorry. I apologize. Strike that.

12 Count One, conspiracy to defraud the United States,
13 commit wire fraud and to violate the Clean Air Act; Count
14 Two, obstruction of justice; and Count Three, entry of goods
15 by a false statement.

16 MR. WEINSTEIN: It has, Your Honor.

17 THE COURT: This Court finds that VW AG's guilty
18 plea as to Count One, conspiracy to defraud the United
19 States, to commit wire fraud, violate the Clean Air Act;
20 Count Two, obstruction of justice; Count Three, entry of
21 goods by false statement, the guilty plea is knowingly,
22 freely, and voluntarily made, and the elements of the
23 criminal offenses as to Count One, Count Two, Count Three, to
24 which VW AG pleads guilty have been made out by Mr. Doess's
25 statements here in open court. And the Court will accept the

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1 guilty plea.

2 Now, this Court, as I think Mr. Neal knows and
3 Mr. Weinstein knows, has been carefully reviewing the Rule 11
4 agreement which lays out in great detail a summary of facts
5 ascertained through the government's investigation, as well
6 as the relevant consideration that led the parties to enter
7 into the agreement.

8 Under Rule 11(c) of the Federal Rules of Civil
9 Procedure, this Court may accept the Rule 11 agreement, may
10 reject the Rule 11 agreement, or may defer its decision on
11 whether to accept or reject it until after reviewing a
12 presentence report, as well as further study.

13 Mr. Neal, and/or Mr. Weinstein, do you wish to be
14 heard as to how you believe the Court should proceed from
15 here?

16 MR. NEAL: Yes, Your Honor.

17 THE COURT: You may proceed.

18 MR. NEAL: Thank you. The government would
19 recommend that the Court accept the Rule 11 plea agreement at
20 this time and proceed to impose a sentence on the company.

21 A few points about the nature of the Rule 11
22 agreement. As I mentioned, when I went through the relevant
23 considerations, this was a very serious offense. It was
24 calculated, rose to a very high level within the company.

25 I think, without overly generalizing, I think

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1 corporate criminal wrongdoing often falls into one of several
2 categories. Either we're talking about a handful of rogue
3 employees who engaged in misconduct, or we're talking about
4 an offense that perhaps is not as calculated, as a result of
5 a series of errors that eventually become a criminal offense.

6 I think in this instance we are talking about a very
7 calculated crime. There was an intent on the part of the
8 corporation to violate U.S. law in order to be able to sell
9 vehicles here. It's a very serious offense. And I think the
10 agreement treats it seriously and treats it with the
11 appropriate level of seriousness.

12 There is a \$2.8 billion fine, which is a very
13 significant fine. The corporation has also been penalized a
14 number of other ways which are referenced in the Rule 11
15 agreement.

16 Obviously, there's the -- based on net present
17 value, roughly \$11 billion settlement that the company has
18 entered into with respect to consumers in this case.

19 There's a \$1.5 billion civil penalty that the
20 company is paying on top of the \$2.8 billion criminal
21 penalty.

22 And perhaps most significantly, from the
23 government's perspective, this case is being resolved through
24 a Rule 11 plea agreement. The corporation has come before
25 Your Honor and publicly pled guilty to these three offenses.

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1 I think that is a substantial benefit to the public that is
2 in the public interest. The company has admitted its
3 wrongdoing and done so in a very public forum.

4 And I think that has had a significant reputational
5 effect on the company, and that's appropriate under these
6 circumstances.

7 I do think the \$2.8 billion fine appropriately
8 weighs all the considerations that are listed in the Rule 11
9 plea agreement, including appropriately crediting both the
10 company's payments on the civil side and the company's
11 cooperation with the government's investigation.

12 It's detailed pretty substantially in the Rule 11
13 agreement itself, but the corporation provided the government
14 with a great deal of information which was very helpful to
15 the government in bringing the investigation to this point.

16 The corporation, pursuant to the Rule 11 agreement,
17 is obligated to continue cooperating with the government and
18 assisting the government to hold the individuals accountable,
19 which the government is certainly trying to do, is very much
20 engaged in that process.

21 I think typically when we deal with Rule 11 plea
22 agreements, the presentence reports would, you know, add a
23 substantial amount of value to the Court's judgment. I think
24 under the circumstances the corporation is willing to waive a
25 presentence investigation, and I think because the relevant

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1 considerations are laid out in the plea agreement, and the
2 statement of facts is so detailed, I think the Court, having
3 reviewed the Rule 11 agreement, and having heard the
4 company's allocution and having considered those relevant
5 considerations, I think the Court could proceed to sentencing
6 at this point without sacrificing its independence or without
7 otherwise having any doubt of the appropriateness of the
8 outcome.

9 So the government would urge the Court to accept the
10 agreement at this time and proceed to sentence. Thank you.

11 THE COURT: Thank you very much, Mr. Neal.

12 Mr. Weinstein, your thoughts?

13 MR. WEINSTEIN: Your Honor, thank you for the
14 opportunity to address the Court on this question.

15 Volkswagen concurs with everything Mr. Neal just
16 said in his explanation of why we believe it's in the
17 public's interest, the Court's interest, and Volkswagen's
18 interest to go forward with sentencing today.

19 I would just add a little bit from Volkswagen's
20 perspective. Your Honor, the conduct here was unquestionably
21 very serious. There's no question at all about that. And
22 that's spelled out in the 30-page statement of facts, that as
23 Your Honor noted is appended to the plea agreement.

24 There's also no question that this Rule 11 plea
25 agreement which is before the Court today provides a very

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1 serious sanction, and appropriately so for that conduct.

2 Your Honor, I know you've been doing this for a long
3 time. Everybody comes before you on a Rule 11 and they say
4 that they accept responsibility. And as you know, actions
5 speak a lot louder than words.

6 And I have never seen in all the time I've been
7 doing this, most of which was spent at the government table,
8 I've never seen a company act more swiftly or aggressively to
9 hold itself accountable for what it did wrong, and to try to
10 make it right.

11 In the case of Volkswagen, that includes a number of
12 the steps that Mr. Neal referenced and that are laid out in
13 the plea agreement, but it includes others, as well. And
14 I'll just highlight a few of them.

15 THE COURT: Go ahead. We're in no rush.

16 MR. WEINSTEIN: It includes the really
17 groundbreaking civil settlements that the company reached
18 with the two-liter and the three-liter classes of victims, as
19 well as the dealers, and with state attorneys general, and
20 the other regulators, including the EPA.

21 In my experience, it's typical for a company to be
22 before the Court for a criminal proceeding like this while
23 its civil exposure is still unresolved.

24 Volkswagen is an extraordinary case in many ways,
25 and one of them is that Volkswagen moved with incredible

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1 speed to try to make things right with consumers from the
2 moment that this controversy came to light. In fact,
3 Volkswagen reached an agreement in principle with the
4 two-liter class within 108 days of the filing of the first
5 multi-district complaint, which is at least in my experience,
6 unheard of.

7 And it reflects the fact that both -- as well as
8 anything I can say, Volkswagen's determination to make things
9 right with consumers as quickly as possible, and they have
10 subsequently reached settlements with the three-liter class
11 as well. And one of the reasons why those settlements have
12 been embraced by such a large percentage of those classes is
13 because Volkswagen took every inference in the consumers'
14 favor and tried to reach a result that would be as generous
15 as possible to the consumer, and they would do better than
16 put the consumers in the position they would have been in,
17 had this conduct never happened.

18 Part of those settlements, Your Honor, also includes
19 trying to make things right with the environment, and so that
20 includes \$2 billion worth of investments in zero electric
21 vehicle infrastructure over a ten-year period. And most
22 significantly, over \$2.9 billion in direct environmental
23 remediation for the excess NOx emissions in this case.

24 Volkswagen's actions also include some of the
25 internal reforms that Mr. Neal referenced, and others, and

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1 these are reforms that, as Your Honor knows, will continue at
2 full speed with the monitor, once the monitor is in place,
3 but that is, as I've told the Court before, Volkswagen didn't
4 want to wait until its internal investigation was over to
5 begin to try to make changes that it knew needed to be made.
6 And that was made evident by the conduct here.

7 And so Volkswagen has already embarked on an
8 aggressive course of internal reforms. We look forward to
9 working with the monitor to build on this.

10 I referenced the independent investigation, another
11 way in which this is extraordinary, the events that bring us
12 here, because that Volkswagen directed its -- the law firm
13 that did the independent investigation to provide information
14 essentially in realtime to the government.

15 That is, instead of waiting until the investigation
16 was over, processing the results and then turning to -- some
17 other compendium of information over to the government, the
18 law firm that did the investigation has essentially been
19 providing information to the government in realtime.

20 And one of the reasons for that is to help the
21 government do its work more quickly, to help the government
22 get to the place where it is today, where it's charged six
23 individuals and is continuing to investigate others to get to
24 that place much more quickly than typically happens in
25 corporate resolutions.

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1 As Your Honor knows, it's often the case that a
2 company will come in and they'll get a DPA or they'll plead
3 guilty. And if individuals are ever charged, it might be a
4 year or two later.

5 This case is different, that six individuals were
6 charged the very same day that the plea agreement with
7 Volkswagen was announced. And I believe that that's credit
8 to the skill of the folks on the government's team, at the
9 government's table, but it's also a reflection of the fact
10 that we tried to make sure that they had the information they
11 needed, so they could act on it more quickly, in their
12 pursuit of individuals.

13 And as the Court knows, Volkswagen is committed to
14 continuing to cooperate with the government, as it continues
15 to investigate individuals.

16 There are weeks that have gone by -- in the course
17 of our cooperation, I think I have talked to Mr. Neal,
18 Mr. Singer, and Ms. Blackwell more often than members of my
19 family. I expect that will continue, as we continue to
20 cooperate in their investigations.

21 And finally, Your Honor, we are here today at the
22 time that -- and the calendar that we are today because
23 Volkswagen approached the government very quickly after this
24 matter came to light to address -- to try to begin the
25 discussions to address Volkswagen's criminal exposure.

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1 And within a matter of months of this controversy
2 coming to light, we came to the government, just like we came
3 to the classes of individual consumer victims, and said, "We
4 want to make it right. We want to resolve our criminal
5 exposure, and we want to do it as quickly as possible."

6 That too is something that is very different from
7 the companies that I've prosecuted, the companies I've
8 represented, and the companies' cases I am familiar with.

9 The plea agreement I think reflects, as Mr. Neal
10 said earlier, takes those actions into account, takes the --
11 as part of its consideration in support of the proposed
12 penalty, and this proposed resolution, the plea agreement
13 considers all the things that I've just said.

14 And it gives appropriate credit to Volkswagen for
15 those actions and for its continuing obligations and
16 commitments. And I think the result of that is that the
17 penalty of \$2.8 billion is by any measure, fair and
18 appropriate.

19 It is another significant step among all the ones
20 that I've mentioned, on Volkswagen's road to make things
21 right and to hold itself accountable.

22 We believe that it is a penalty that is in
23 Volkswagen's interest because the certainty -- a certain
24 comprehensive penalty is a severe penalty. It sends exactly
25 the right message to other companies and to this company that

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1 this kind of misconduct will not be tolerated. As I said, it
2 reflects our commitment to make sure that we do everything
3 possible to make sure this never happens again or anything
4 like it.

5 And we believe it's in the public's interest too,
6 for all of those reasons and for the reasons Mr. Neal
7 mentioned.

8 I would echo what Mr. Neal said about PSR. I think
9 under the unusual circumstances here, where you have a
10 30-page statement of facts that is the product of more than a
11 year-long investigation by the government, there aren't
12 really any additional facts that could come out in a
13 presentence investigation that I think would be of material
14 value to Your Honor in deciding whether to accept the
15 agreement.

16 And I think, as Mr. Neal meticulously laid out, the
17 considerations as to the penalties are all there in the
18 agreement, and while I think the probation officer -- I don't
19 think I've ever had a case where a PSR did not add value. I
20 think this is one of the most rare. It really -- I wouldn't
21 add anything to the mix of information that the Court needs
22 to make its decision, because it's all right there.

23 So we believe that it's in the interest of the
24 government, Volkswagen, and the public, for the agreement to
25 be accepted. And we would also join the government in asking

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1 the Court to proceed with sentencing today.

2 THE COURT: Thank you, very much.

3 All right. I've received, quote, unquote, two
4 objections to the -- to this proceeding, one from an
5 individual by the name of Oleg Yarin, Y-a-r-i-n, and then an
6 attorney, Mr. Hilborn, has appeared -- or has a quote,
7 unquote, objection.

8 I apologize. I'm not exactly sure what you're
9 objecting to, Mr. Hilborn, whether it's the plea, or the
10 sentence, or what?

11 MR. HILBORN: Your Honor --

12 THE COURT: I'm not done yet speaking.

13 MR. HILBORN: Okay.

14 THE COURT: So Mr. Yarin is not here, as I
15 understand.

16 So Mr. Hilborn, it's my understanding that -- you
17 can come up here and briefly tell me what you are objecting
18 to.

19 MR. HILBORN: Your Honor --

20 THE COURT: And give me your full name, please, and
21 who you're representing.

22 MR. HILBORN: I represent approximately 300
23 individuals who did not accept the plea agreement -- or the
24 class-action agreement, and those people are objecting that
25 there is no restitution as required in this plea agreement.

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1 So yes, we are objecting to the sentence, not the
2 actual plea itself.

3 THE COURT: Okay. So you have no problem with the
4 sentence -- you have no issue with the plea. And you want
5 what?

6 MR. HILBORN: I want restitution to the victims of
7 this crime. And I believe that they're entitled to
8 restitution pursuant to the mandatory Victims Rights Act.

9 THE COURT: Which is?

10 MR. HILBORN: The cite?

11 THE COURT: Yeah.

12 MR. HILBORN: I don't have my pleadings with me, but
13 ultimately -- Mike Melkersen is here to make the argument.

14 THE COURT: But you --

15 MR. HILBORN: I understand I filed the objections.

16 THE COURT: Exactly.

17 MR. HILBORN: Absolutely.

18 THE COURT: So we should be okay.

19 MR. HILBORN: Okay.

20 THE COURT: Thank you.

21 MR. HILBORN: Thank you.

22 THE COURT: I just met Mr. Weinstein on this case,
23 but Mr. Neal I've a lot of respect for. He is just one of
24 the finest lawyers that I've encountered in my 21-plus years
25 of being a Judge. I mean, he is just an excellent -- and

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1 he's a person of character.

2 And when Mr. Neal makes a request, I take it very,
3 very seriously. And I understand both of you want me to
4 proceed to immediate sentencing.

5 With all due respect, Mr. Neal, you said something
6 that struck me again, that this is a very, very serious
7 offense. And I agree with you that VW's offense, offenses,
8 are very, very, very serious.

9 And I think it's incumbent upon me to make a
10 considered decision and give a carefully considered sentence.
11 And I just want more time to reflect and study. And I am
12 going to refer this case over to Mr. Ragala, who I think we
13 all know by now has specialized training in these types of
14 cases, for a presentence report.

15 And it's my goal -- I know you want this matter
16 moved on an expedited basis. So I think Ms. McCoy is going
17 to give you a sentence date, and let's hope it works, in
18 about four weeks.

19 DEPUTY COURT CLERK: I think April 21st at
20 9:30 a.m., on a Friday.

21 THE COURT: Will that work?

22 MR. NEAL: That works for the government.

23 MR. WEINSTEIN: That works for us as well, Your
24 Honor.

25 THE COURT: Mr. Doess, would that work for you?

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1 MR. DOESS: I need to check my calendar, but I will
2 make myself available whenever it's necessary, Your Honor.

3 THE COURT: We can take a moment. Do you want to
4 check your calendar?

5 MR. DOESS: The problem is I don't have my cell
6 phone with me.

7 THE COURT: Well, if that date becomes
8 insurmountable for you, please let us know and we will adjust
9 it, okay? But I would like to really do it based upon VW's
10 request and the government's request on Friday, April 21 at
11 9:00 a.m., okay?

12 MR. DOESS: I will try my best, Your Honor.

13 THE COURT: All right. Let's see here. So we have
14 our sentence date, and I would also like to have a status
15 conference with the attorneys. And, Mr. Weinstein, you can
16 call in if you want Thursday.

17 MR. WEINSTEIN: Thank you, Your Honor.

18 THE COURT: Probably after the Schmidt hearing.

19 MR. WEINSTEIN: Okay.

20 THE COURT: Can we take like a 15 -- we're done
21 right now, obviously, but I would like to meet with the
22 attorneys at about 10 after 11, is that okay?

23 MR. NEAL: It is for the government, Your Honor.

24 THE COURT: So give us about a 15 minute break and
25 then come back to chambers and we will have a little

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1 conversation.

2 MR. NEAL: Okay. Thank you very much.

3 THE COURT: Anything else?

4 MR. NEAL: Nothing for the government, Your Honor.

5 MR. WEINSTEIN: No, Your Honor.

6 DEPUTY COURT CLERK: All rise. Court is in recess.

7 (Court in recess at 10:58 a.m.)

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I, Marie J. Metcalf, Official Court Reporter for the
United States District Court, Eastern District of Michigan,
Southern Division, appointed pursuant to the provisions of
Title 28, United States Code, Section 753, do hereby certify
that the foregoing is a correct transcript of the proceedings
in the above-entitled cause on the date hereinbefore set
forth.

22

23

I do further certify that the foregoing transcript
has been prepared by me or under my direction.

24

s\Marie J. Metcalf

March 13, 2017

25

Marie J. Metcalf, CVR, CM

(Date)